

ZONING BOARD OF APPEALS
MEETING MINUTES
June 10, 2008
4:00 P.M.

CALL TO ORDER: Mr. Carlyle Sims, Chairperson called meeting to order at 4:00 p.m.

ATTENDANCE:

Members Present: Deland Davis, Mike Fatt, Gentry Hammons, Jim Moreno, Carlyle Sims and John Stetler

Members Excused: Greg Dunn

Staff Present: Glenn Perian, Senior Planner; Barbara Hobson, Attorney, City Attorney Office and Leona Parrish, Admin. Assistant

ADDITIONS OR DELETIONS TO THE AGENDA: None

Mr. Carlyle Sims, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He asked that they come forward and state their name and address for the record as it is being recorded.

Meeting Note: We have citizens present regarding Appeal #Z-07-08 (76 S. 26th Street) that are hearing impaired and asked that an interpreter to be present for this meeting, therefore we will be moving Appeal # Z-07-08 to be heard first on the agenda in order to lessen the cost for this service provided.

Appeal # Z-07-08: Mr. Glenn Perian stated this was an appeal from Mr. Jason Magnus, 76 S. 26th Street, Battle Creek, MI 49015-2719 asking for a variance to waive the minimum front-yard fence height of 4 ft. to allow a 6 ft. fence, for property located on a corner. He stated there are photos and diagram with the code requirements for lots that are considered corner lots or double frontage lots included in the meeting packet. He stated a permit was pulled and issued for this fence and discovered during the inspection process that the fence was too close to the road at the 6 ft. height.

Mr. Perian noted that the correspondence received in opposition from neighbor at 75 S. 26th Street was a misunderstanding. They were under the impression they wanted to put a 6 ft. fence in their front yard. Because of being on the corner they are considered having two fronts, and they did not have a problem with the fence as it was currently which was on the side, as it had already been installed.

Mr. Jason Magnus, 76 S. 26th Street, petitioner and property owner was present and came forward to speak. Stated they have a large dog (Great Dane) and because they live across from the school, they wanted to keep him contained away from the children. Stated he was not aware of the required setbacks and spoke with two friends of his that were contractors and acquired the fence permit, installed the fence and found out later he was not in compliance and needed to seek a variance.

Mr. John Stetler asked the owner if it was installed by a fence company. Mr. Magnus stated no he installed the fence.

Mr. Deland Davis asked Mr. Magnus about the height of the fence being only 4 ft. on the east side and if the dog could jump it also. Mr. Magnus stated yes, he will want to change that height at a later date with

a few sections of 6 ft. privacy fencing as the dog scares people as they walk by. Mr. Davis said that that addition would also be not in compliance because it would be within the 25ft. setback.

Mr. Carlyle Sims stated that being close to the corner with the height of 6 ft., it would impair the vision of cars, etc. and that bicycles could cross and get hit.

Mr. Magnus stated the fence only goes halfway down on 27th Street and that the street has two speed bumps to slow the cars down and did not feel it would be a deterrent.

Mr. James Moreno asked if he would be in favor of pushing the fence back and asked the Mr. Magnus would it be difficult for him to move the fence.

Mr. Magnus stated he would not be opposed to moving the fence and could if requested to do so, said it would take about a day move.

Mr. John Stetler said he is having a problem identifying a difficulty. Said the dog is a problem, but he cannot see a practical difficulty and that the fence should be set back 25 ft. as the ordinance states.

Mr. Glenn Perian wanted to remind the board to utilize the criteria sheet in making a decision.

It was asked to define in the ordinance what is a privacy fence looked like.

Mr. Gentry Hammons stated he would like to have a new zoning ordinance to better define what a privacy fence looks like.

Mr. Perian stated it would be one you cannot see through. He referred to "Chapter 1298.05 Commercial Fences" that talks of a concealment type and that the common definition is one you cannot see through.

Mr. Carlyle Sims asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

***MOTION: MR. JAMES MORENO MADE A MOTION TO APPROVE # Z-07-08
VARIANCE AS PRESENTED FOR PROPERTY LOCATED AT 76 S. 26TH STREET,
SUPPORTED BY MR. GENTRY HAMMONS.***

Discussion:

Mr. Deland Davis asked if their front door faced Iroquois, and stated that this parcel was a peculiar shape and that the back yard was very small maybe 6 ft. He also is worried regarding bicycles not being seen.

Mr. Mike Fatt asked if the fence was in the right-of-way. Mr. Perian stated it was on their property line.

Mr. John Stetler stated that it does not meet their criteria for approval.

Mr. Magnus asked when he paid for the permit and site approval; how did the permit get issued in the first place.

Mr. John Stetler stated it was approved and issued in error.

Mr. James Moreno stated this is unique because of the size of this lot and being near the school, and the need for separation for privacy. It is possible that he could move the fence back a little bit. States he does meet one of their criteria for approval.

Mr. Mike Fatt states it does fail to meet points #7 & #8.

Mr. Carlyle Sims stated they could move it back and would then work for the intersections for better visibility and safety issues.

MOTION AMENDED: MR. DELAND DAVIS MADE A MOTION TO APPROVE # Z-07-08 VARIANCE WITH THE CONDITION THAT THEY MOVE THE 6 FT. FENCE BACK 10 FT. FACING IRIQUOIS AND 27TH STREET FOR PROPERTY LOCATED AT 76 S. 26TH STREET, SUPPORTED BY MR. JIM MORENO.

A VOTE WAS TAKEN FOR THE AMENDED MOTION; FOUR (DAVIS, HAMMONDS, MORENO, AND SIMS) IN FAVOR; TWO (FATT AND STETLER) OPPOSED: AMENDED MOTION APPROVED.

MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; FOUR (DAVIS, HAMMONDS, MORENO, AND SIMS) IN FAVOR; TWO (FATT AND STETLER) OPPOSED: MOTION APPROVED.

OLD BUSINESS:

Appeal #Z-01-08: Mr. Glenn Perian noted for the record that this petition has been withdrawn by the appellant as it has been advised by the City Attorney's office that 167 Bryant is considered a nonconforming property and is able to maintain the existing three(3) residential units (3 units are a grandfathered use).

Appeal #Z -04- 08:

Mr. Glen Perian stated this was an appeal from Ms. Sherry Gilmer requesting a variance to waive the side-yard setback for the construction of an two stall attached garage to be built for property located at 318 W. Hamilton Lane. Noted this appeal was carried over from last month due to applicant being hospitalized and not having an authorized representative present.

Ms. Sherry Gilmer, 318 W. Hamilton Lane was present, stated she is requesting a variance for a side yard setback from 8 ft. to 4 ft. in order to construct an attached two car garage to her existing dwelling. Stated she has a very deep back yard and that all the properties in that neighborhood are very narrow and deep. Noted she suffers from a brain stem disorder that is worsened when exposed to cold weather conditions and is very painful. Stated she does not have access to the house in the rear and if built there it would block off the only window to the bedroom and bathroom. She provided a letter from her side-yard neighbor Mr. Michael Reed stating his approval for this variance. Said that her current detached one car garage is already closer to the property line than what she is asking to be approved, which she plans keep and convert into a garden shed.

Mr. John Stetler asked what the dimensions were for the garage addition that she is requesting to build. Ms. Gilmer stated it is 24 ft. in width and 30 ft. in depth.

Mr. Mike Fatt asked what the height would be for this garage addition. Ms. Gilmer stated it would have it the same as the house. That she has a cape cod designed with a 10/12 roof pitch home and would want it to match the style and fit in with the neighborhood.

Mr. Carlyle Sims stated he looked at the 26 ft. height, and thought most garages are not that high.

Mr. Stetler asked if would be attached to the porch. Ms. Gilmer stated no she will be removing the porch and then attach the new garage to the side of the house.

Mr. Deland Davis stated that she currently has a one car garage and if she could build the new attached garage smaller, that it would not need to be 24 ft. wide, stated that his two car garage is 20 ft. wide and can still get an SUV and Mini-Van inside with 2 ft. additional room.

Ms. Gilmer stated she has an SUV and cannot get it into the current one car garage which is not attached and would not eliminate her getting out into the elements; that it needed to be larger as they would be loosing space because the basement is two-feet higher and would need a deck or steps to get inside.

Mr. Carlyle Sims asked if they were going to fill or do stairs. Owner stated will do a deck with stairs, and possibly add a handicap ramp because for the next 4 to 6 weeks she will be in a wheelchair.

Mr. Gentry Hammons asked if the steps and landing could still work with a one car garage. Ms. Gilmer stated that it would work but she would still get exposed to the elements going and coming from the garage when someone picks her up. The purpose of having it attached is so she can go in and out during the inclement weather without causing more pain than what she has currently.

Mr. Mike Fatt asked Mr. Glenn Perian if the height would be a problem. Mr. Perian stated no, as long as it matched the same roof line as the house.

Mr. Gentry Hammons stated he has had some physical challenges also, and has had a one car garage and had to use a wheelchair and could get in and out without a problem, said he cannot see supporting a two car garage.

Ms. Gilmer stated she does not often drive at night and rely on others for transportation. Noted that in her neighborhood others with newly built two car garages have built closer to their property lines and have not been grandfathered and it had been allowed in the past.

Mr. Deland Davis stated he now understands that she wants both cars to be inside so when someone picks her up they can pull inside the garage along with her car.

Mr. Carlyle Sims asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. DELAND DAVIS MADE A MOTION TO APPROVE # Z-04-08 VARIANCE AS PRESENTED FOR THE SETBACK BE LESS THAN THE 8 FT. REQUIRED FOR PROPERTY LOCATED AT 318 W. HAMILTON LANE, SUPPORTED BY MR. JOHN STETLER.

Discussion:

Mr. Deland Davis stated he feels this is unique as it is built close to the property line and the neighbors house to the east have built farther from their property line and would have a lot of separation.

Mr. Mike Fatt stated you can accomplish the same objectives by making the garage two cars deep, which is not unusual and typical in other towns.

Mr. Carlyle Sims stated you would still need it wide enough for the stairway.

Mr. John Stetler stated the stairway would take 4 ft.

MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; TWO (DAVIS, AND SIMS) IN FAVOR; FOUR (FATT, HAMMONS, MORENO, AND STETLER) OPPOSED: MOTION DENIED.

It was noted for the record from those opposed that this variance did NOT meet the Zoning Board of Appeals Authority checklist for the following reasons:

Condition #1: Did the appellant show that a hardship or practical difficulty would exist absent of the requested variance?

Condition #4: Is the alleged hardship or practical difficulty unique to the subject property resulting in conditions that do not generally exist throughout the City?

Mr. Carlyle Sims noted the appeal has been denied and they have the option to appeal to the Circuit Court to overturn this decision.

Mr. James Moreno wanted it noted for the record that the primary reason he could not support is the hardship demonstration, he empathize for her medical condition, but based on the criteria they need to follow, he could not establish that hardship, as they have other options available to meet her need.

Ms. Gilmore stated she did not know what the board was looking for, and that she was willing to work with them and wanted it to look aesthetically correct for the neighborhood, she does not know what the zoning board want.

Mr. John Stetler stated that Mr. Mike Fatt's suggestion of the Tandem garage is probably the only way they could to it and be in compliance with the zoning ordinance. Ms. Gilmer stated her neighbor would not want her to build that way because it would block his vision. Mr. Stetler said he would not have a choice in the matter.

Mr. Carlyle Sims stated she could have her developer look at other options available.

Mr. Michael Fatt stated she does have other alternatives and such as raising the level of the garage floor.

Mr. Gentry Hammons stated he did not see a practical difficulty.

NEW BUSINESS:

Appeal #Z -06- 08: Mr. Glenn Perian stated the appellant is requesting a dimensional variance from the Planning and Zoning Code to split an existing 1 acre lot into 2-separate lots in an “ AG - Agricultural District” located at 905-929 Carver Road. The one home was established on the one acre lot and a second home was built in 2004, as what they call a Mother-In-Law quarters. The request is a variance from Chapter 1282 “lot area and width requirements” states that in an AG zone that the minimum lot size is one acre.

Mr. Perian noted that Mr. Gentry Hammons received a note (handed-out) from the City’s Assessors Department stating that the parcels could be assessed separately for tax purposes in 2009 with separate tax ID #'s and until then they would have to have a written request to pro-rate 2008 taxes.

Mr. James Moreno stated he has a conflict of interest; that the owner is his sister-in-law and he would be abstaining from this discussion and voting regarding this variance application.

Mr. Robert Markos, 8415 2 ½ Mile Road, East LeRoy, MI was present to speak; stated they purchased this property to split for their sons could then get mortgages to purchase separately. They need to have separate mortgages and in doing so they would need this parcel to be split.

Mr. Markos stated he measured himself and submitted a diagram of the proposed split done by Crane Land Surveying Co. Said they are willing to do whatever it needs to be split.

Mr. Mike Fatt asked what the size of the lot currently.

Mr. Glenn Perian stated the property is currently one acre, zoned AG “Agricultural”. Which is the minimum lot size for AG zoned parcel and they are asking to split the one acre, into two parcels.

Mr. Carlyle Sims asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. JOHN STETLER MADE A MOTION TO APPROVE # Z-06-08 VARIANCE AS PRESENTED FOR PROPERTY LOCATED AT 905-929 CARVER ROAD, SUPPORTED BY MR. DELAND DAVIS.

Discussion:

Mr. Gentry Hammons asked if the petitioner was in agreement with keeping the property one acre and having the Assessors office split the tax assessment.

Mr. Markos stated they want to sell it as two parcels and cannot do this if they only have the Assessor split just the taxes.

Mr. Mike Fatt asked how it was allowed that the second house built on this parcel of land.

Mr. Glenn Perian stated it was permitted as a family member can build on the same parcel. Said that the Building Superintendent stated it possibly was built with the understanding the older structure that was built in the 1800’s and was to be demolished and had not been done.

Mr. Gentry Hammons stated he would not be in favor of approving because their criteria for approving cannot be for financial gain.

MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; TWO (DAVIS, AND SIMS) IN FAVOR; THREE (FATT, HAMMONS, AND STETLER) OPPOSED; (MORENO) ABSTAINED: MOTION DENIED.

It was noted for the record from those opposed that this variance did NOT meet the Zoning Board of Appeals Authority checklist for the following reasons:

Condition #6: When considering hardship or practical difficulty; was a decision rendered on information based on substantially more than a mere inconvenience or inability to attain a higher financial return?

Mr. Carlyle Sims stated if they wished to do so, they have an option to appeal to the Circuit Court to overturn this board's decision.

Ms. Barbara Hobson, Attorney, City Attorney Office wanted it noted for the record regarding appeals to Circuit Court; the court cannot look at it and overturn it, they just see if it was based on competent information. The court can return it to the Zoning Board of Appeals, but not just outright overturn it.

APPROVAL OF MINUTES:

MOTION WAS MADE BY MR. JAMES MORENO TO APPROVE THE MAY 13, 2008 ZONING BOARD OF APPEALS MINUTES AS SUBMITTED, SUPPORTED BY MR. JOHN STETLER. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. Carlyle Sims wanted to apologize for the confusion regarding appeal # Z-07-08, he was under the impression the hearing impaired couple were the petitioners.

It was noted by the board that when approving fence permits; they should be reviewed closer when being approved and review the setbacks closer. That it puts the City in a bad situation.

Mr. Glenn Perian stated they do have a zoning review that is apart of the building permit application and a person that is qualified to do those inspections for the fence applications and has also happened in the past. The petitioner paid \$10.00 zoning review fee which is included in the fence permit fee.

Mr. John Stetler stated it is the same with the two houses; he could not see the reason they were permitted to build.

ADJOURNMENT: Mr. Deland Davis made a motion to adjourn the meeting, second by Mr. Gentry Hammons; all in favor. Meeting adjourned at 5:03 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department